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CONTEMPORARY FORMS OF SLAVERY

Preparatory document submitted by Mrs. Linda Chavez on the question of systematic rape, sexual slavery and slavery-like practices during wartime 1/

I. BACKGROUND FOR THE STUDY

1. Rape (that is, non-consensual intercourse through the use of physical force, threats or intimidation) is unfortunately a widespread phenomenon, which has particularly devastating consequences on the enjoyment of the basic right to dignity and the security of person of women, who comprise the greatest number of the victims of rape. Although rape occurs most frequently in a criminal context and is punishable by domestic criminal law, systematic rape can also be used as an instrument of torture or as an abhorrent instrument of warfare. 2/ In these instances, rape violates fundamental principles and rules of international law, in particular humanitarian and human rights law. 3/

2. Rape committed by soldiers has been prohibited by law for centuries. 4/ Nevertheless, in many instances soldiers have been given licence to rape as an instrument of policy; and forced prostitution during wartime has also been practised on a large scale, notably during the Second World War. Most recently, 5/ rape has been widely and systematically used in the former Yugoslavia, especially in Bosnia and Herzegovina, as a method of ethnic cleansing, as noted in reports of the United Nations, the European Community, the Conference on Security and Cooperation in Europe, and various

non-governmental organizations. 6/ Rape victims in Bosnia and Herzegovina have been chosen with a view towards inflicting suffering not only on the individual victims but on their families and communities as well. Rapes have been committed in public, and victims have included elderly women, children, or family members of local Bosnian leaders.

3. While the immediate harm and anguish to victims caused by rape is readily apparent, we are only now coming to understand better the long-term emotional and/or physical consequences for victims. Recent publicity concerning the continued deleterious effects suffered by Chinese, Dutch, Filipino, Indonesian and Korean women forced into sexual slavery during the Second World War confirms that systematic rape can have a devastating impact on its victims, which lasts years beyond the immediate horror of the act itself. Despite this, the practice concerning prosecution for rape during war, including armed conflict, and compensation of victims has been mixed. In view of the catastrophic effects of systematic rape and its widespread use both historically and in contemporary armed conflicts, it is recommended that an in-depth study of systematic rape, sexual slavery and slavery-like practices be undertaken.

II. OBJECT OF THE STUDY

4. The purpose of the study will be to explore the following topics:

(a) The history of systematic rape as an instrument of policy, with special emphasis on the broad-scale use of rape, sexual slavery and slavery-like practices during wars, including armed conflicts, in this century;

(b) Rape as a crime under international humanitarian law, including the evolving definition of rape as a war crime;

(c) Compensation for victims of systematic rape, sexual slavery and slavery-like practices during armed conflict.

III. OUTLINE OF THE STUDY

5. The study will examine the following relevant treaties and other international standards, with relevant interpretation, including, but not limited to, the following:

(a) The Four Geneva Conventions for the protection of the victims of armed conflict of 1949;

(b) The Two Additional Protocols of 1977 to the Geneva Conventions;

(c) The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;

(d) The Convention on the Elimination of All Forms of Discrimination against Women;

(e) The Slavery Convention;

(f) The Protocol amending the Slavery Convention;

(g) The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

(h) The Forced Labour Convention;

(i) The Abolition of Forced Labour Convention;

(j) The Convention on the Prevention and Punishment of the Crime of Genocide;

(k) The Charter and Judgement of the Nürnberg Tribunal;

(l) The Control Council Law No. 10;

(m) The Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia since 1991;

(n) The United Nations Compensation Commission;

(o) The Convention on the Rights of the Child.

6. The study will take into account the relevant studies and resolutions of the Commission on Human Rights, the Sub-Commission and its working groups, including, but not limited to, the following:

(a) Report of the Working Group on Contemporary Forms of Slavery on its eighteenth session (E/CN.4/Sub.2/1993/30);

(b) Report of the Working Group on Contemporary Forms of Slavery on its seventeenth session (E/CN.4/Sub.2/1992/34);

(c) Final report submitted by Mr. Theo van Boven on the Study concerning the right to restitution, compensation, and rehabilitation for the victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1993/8);

(d) Report of Mr. Tadeusz Mazowiecki on the situation of human rights in the territory of the former Yugoslavia (A/48/92-S/25341);

(e) Commission resolution 1993/8 entitled "Rape and abuse of women in the territory of the former Yugoslavia";

(f) Commission resolution 1993/46 entitled "Integrating the rights of women into the human rights mechanisms of the United Nations";

(g) Report of Mrs. Erica-Irene Daes entitled "New types of war crimes and crimes against humanity: violations of international humanitarian and human rights law".

7. The study may also incorporate information on systematic rape, sexual slavery and slavery-like practices gathered from other sources, including Governments and non-governmental organizations.

8. The study will examine what remedies - civil, administrative and penal - exist at the national and international levels.

9. The study will submit conclusions and recommendations based on the review of the relevant facts and legal analysis.

IV. DRAFT TIME-TABLE OF THE STUDY

10. The preliminary report will be submitted to the Sub-Commission at its forty-sixth session (1994).

11. The final report will be submitted to the Sub-Commission at its forty-seventh session (1995).

Notes

1/ The author has drawn heavily on the following sources for information contained in this paper: Erica-Irene Daes, "New Types of War Crimes and Crimes Against Humanity: Violations of International Humanitarian and Human Rights Law", International Geneva Yearbook, 1993; and Theodor Meron, "Rape As a Crime Under International Humanitarian Law", American Journal of International Law, vol. 87, No. 3.

2/ Custodial rape, or rape in circumstances in which the Government is responsible under the law of State responsibility, is well recognized as a violation of the prohibition against torture or inhuman treatment in international human rights law.

3/ Daes, op. cit.

4/ Rape by soldiers was a capital offence under national military codes as far back as fourteenth century England, for example.

5/ Systematic rape was also recently practised during the Iraqi occupation of Kuwait. See Walter Kälin, "Report on the situation of human rights in Kuwait under Iraqi occupation" (E/CN.4/1992/26).

6/ See especially Tadeusz Mazowiecki, "Report on the situation of human rights in the territory of the former Yugoslavia" (A/48/92-S/25341), annex.